IN THE HIGH COURT OF DELHI

FAO No. 140/2006

Sh. Jagdish Prasad Paliwal ..... Appellant
! through: Mr. N.S.Dalal, Advocate

VERSUS

$ National Insurance Co. Ltd. ..... Respondent
^ through: None.

% DATE OF DECISION: 14.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**(Oral)
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1. The appellant is aggrieved by the directions issued in the order dated 28.4.2006 requiring appellant to pay interest to the insurance company on the principal sum which was required to be paid by the insurance company to the claimants.

2. Atender, died an untimely death at a road accident. His mother, wife and minor sons claimed compensation under the Motor Vehicles Act 1988. Appellant was the owner of the vehicle in question. It was insured with National Insurance

Company. The appellant, the driver of the vehicle and the insurance company were impleaded as respondents No.1, 2 and 3 in the claim petition.

3. Appellant was served in the claim petition. He engaged a lawyer. He claims that his lawyer cheated him by pocketing the fee and not appearing before the Tribunal as also not informing the appellant as to what was happening before the Tribunal.

4. The insurance company took a defence that it was entitled to avoid the policy for the reason it was a term of the policy that the vehicle which was the subject matter of the insurance would not be entrusted for being driven to a person not possessing a valid driving licence. It was alleged that the driver did not possess a driving licence which entitled him to drive the vehicle which was the subject matter of the insurance.

5. The insurance company successfully proved that the licence which was seized by the police after the accident, copy whereof was made available to the insurance company, did not permit the driver to drive a heavy duty vehicle. It permitted him to drive a light motor vehicle.

6. During trial the insurance company served notice on

the appellant under Order 12 Rule 8 CPC to produce the policy

of insurance and the driving licence of the driver if appellant had one to produce. In spite of service of said notice upon him, appellant did not bother to attend the hearing before the Tribunal.

7. The result was that the Tribunal held that the insurance company was entitled to avoid liability under the policy of insurance, but in harmony with the law laid down by the Supreme Court in the decision reported as 2004 (3) SCC 297 *National Insurance Co. Ltd. vs. Swaran Singh* wherein it was held that the insurance company was liable to satisfy the award in favour of the claimants and recover the same from the assured, the tribunal held that on satisfying the award, the insurance company could recover the amount from the appellant.

8. The insurance company satisfied the award and proceeded to recover the sum paid over to the claimants by seeking attachment of the property of the appellant. The appellant rushed to the Court and filed an application under Order 9 Rule 13 CPC praying that the ex-parte award be set aside. He produced what according to the appellant was the driving licence shown to him by the driver when he had

engaged the services of the driver. He stated that his lawyer had cheated him.

9. The Tribunal caused an inquiry to be made and in relation to the record of the licensing authority found out that the driver of the offending vehicle possessed a valid driving licence.

10. As a result of this evidence which was brought on record, learned Tribunal absolved the appellant from the liability to reimburse the principal sum awarded and paid by the insurance company to the claimants but opined that the appellant was liable to reimburse the interest to the insurance company for the reason had he dutifully participated at the trial and had he produced the driving licence in question, unnecessary trial on the issue of the driver possessing a valid driving licence would have been avoided. That as a result of delay, insurance company was saddled with the liability to pay interest to the claimants.

11. I concur with the view taken by the Tribunal for the reason claim petition was filed on 3.2.1999. Appellant was served with a notice in the claim petition for 30.8.1999. The award was published on 5.5.2005. Appellant did not ever bothered to contact his lawyer for 6 years. Not only that,

during trial, insurance company served a notice under Order 12 Rule 8 CPC, Ex.R-1 upon the appellant to produce the licence and the

original policy. Postal receipt Ex.R-2 evidences that the registered envelope containing the notice was posted to the appellant. AD card, Ex.R-4 shows that the postal envelope was duly received by the appellant. This happened in the month of December 2004. In spite thereof, appellant did not bother to contact his lawyer or visit the Court to respond to the said notice.

12. It is a case where appellant has been grossly negligent in defending the proceedings. The negligence borders on culpability.

13. The appeal is dismissed.

14. LCR be returned forthwith.

November 14, 2007 **PRADEEP NANDRAJOG, J.**
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